

229032

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**CARGILL, INCORPORATED** )

**Complainant,** )

**v.** )

**Docket No. 42120**

**BNSF RAILWAY COMPANY** )

**Defendant.** )

**BNSF RAILWAY COMPANY'S ANSWER TO  
SUPPLEMENT TO COMPLAINT**

Richard E. Weicher  
Jill K. Mulligan  
Adam Weiskittel  
BNSF RAILWAY COMPANY  
2500 Lou Menk Drive  
Fort Worth, TX 76131  
(817) 352-2353

Samuel M. Sipe, Jr.  
Anthony J. LaRocca  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
(202) 429-3000

**ATTORNEYS FOR  
BNSF RAILWAY COMPANY**

March 23, 2011

ENTERED  
Office of Proceedings

Mar 22 2011

Part of  
Public Record

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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<b>CARGILL, INCORPORATED</b>	)	
	)	
<b>Complainant,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 42120</b>
	)	
<b>BNSF RAILWAY COMPANY</b>	)	
	)	
<b>Defendant.</b>	)	
<hr/>	)	

**BNSF RAILWAY COMPANY'S ANSWER TO SUPPLEMENT TO COMPLAINT**

- Defendant BNSF Railway Company ("BNSF") hereby answers the Supplement to Complaint filed by Cargill, Incorporated ("Cargill") in this proceeding. BNSF responds to the allegations in each separately numbered paragraph of the Supplement to Complaint as follows:

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1. ~~Paragraph 1 of the Supplement to Complaint does not set forth an allegation as to~~  
which a response is required. Paragraph 1 of the Supplement to Complaint purports to characterize the allegations in Paragraph 5 of Cargill's April 19, 2010 Complaint. Cargill's April 19, 2010 Complaint speaks for itself.

2. Paragraph 2 of the Supplement to Complaint does not set forth an allegation as to which a response is required. Paragraph 2 of the Supplement to Complaint purports to characterize the allegations in Paragraphs 6, 7 and 8 of Cargill's April 19, 2010 Complaint. Cargill's April 19, 2010 Complaint speaks for itself. BNSF denied the allegations in Paragraphs 6, 7 and 8 of Cargill's April 19, 2010 Complaint.

3. Paragraph 3 of the Supplement to Complaint does not set forth an allegation as to which a response is required. Paragraph 3 of the Supplement to Complaint purports to

characterize the allegations in Paragraph 9 of Cargill's April 19, 2010 Complaint. Cargill's April 19, 2010 Complaint speaks for itself.

4. Paragraph 4 of the Supplement to Complaint does not set forth an allegation as to which a response is required. Paragraph 4 of the Supplement to Complaint purports to characterize the allegations in the WHEREFORE Paragraph of Cargill's April 19, 2010 Complaint. Cargill's April 19, 2010 Complaint speaks for itself. BNSF denies that Cargill is entitled to any relief under its April 19, 2010 Complaint or its Supplement to Complaint.

5. BNSF admits the allegations of Paragraph 5 of the Supplement to Complaint.

6. BNSF admits the first sentence of Paragraph 6 of the Supplement to Complaint. The second sentence of Paragraph 6 of the Supplement to Complaint is a reference to Paragraph 4 of Cargill's April 19, 2010 Complaint and it does not set forth an allegation as to which a response is required. BNSF denied the allegations in Paragraph 4 of Cargill's April 19, 2010 Complaint.

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7. BNSF admits the allegations of Paragraph 7 of the Supplement to Complaint.

8. BNSF admits the allegations of Paragraph 8 of the Supplement to Complaint.

9. Paragraph 9 of the Supplement to Complaint states a legal conclusion to which no response is required.

10. BNSF denies the allegations of Paragraph 10 of the Supplement to Complaint.

11. BNSF admits the allegations of Paragraph 11 of the Supplement to Complaint.

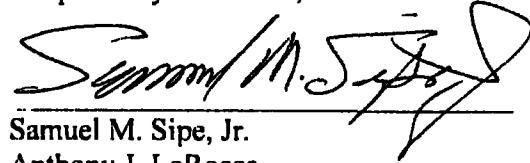
#### **DEFENSES**

1. The Supplement to Complaint fails to state a claim that BNSF has engaged in an unreasonable practice in violation of 49 U.S.C. § 10702.

2. The Supplement to Complaint fails to state a claim that the rates and fuel surcharges referenced in the Complaint exceed a reasonable maximum.
  3. The Board lacks jurisdiction to consider the Supplement to Complaint because BNSF does not have market dominance over the traffic at issue.
  4. The rates and fuel surcharges referenced in the Supplement to Complaint do not exceed a reasonable maximum.
  5. Any claims for damages on traffic transported more than two years prior to the filing of the Supplement to Complaint are barred by the statute of limitations.
  6. The Supplement to Complaint fails to state a claim on which relief can be granted to the extent that it addresses movements of commodities that have been exempted from regulation by the Surface Transportation Board or the Interstate Commerce Commission.
  7. The Supplement to Complaint fails to state a claim on which relief can be granted to the extent that it seeks relief for any payments, including payments of fuel surcharges, made by a freight payor other than Cargill.
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8. The Supplement to Complaint fails to state a claim on which relief can be granted to the extent that it seeks relief for any payments made to BNSF, including payments of fuel surcharges, for interline transportation services provided by a carrier other than BNSF.
  9. The Supplement to Complaint fails to state a claim on which relief can be granted to the extent that it seeks relief for any payments, including payments of fuel surcharges, made to a carrier other than BNSF for the provision of interline transportation service.

Richard E. Weicher  
Jill K. Mulligan  
Adam Weiskittel  
BNSF RAILWAY COMPANY  
2500 Lou Menk Drive  
Fort Worth, TX 76131  
(817) 352-2353

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Samuel M. Sipe, Jr.", written over a horizontal line.

Samuel M. Sipe, Jr.  
Anthony J. LaRocca  
STEPTOE & JOHNSON LLP  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
(202) 429-3000

ATTORNEYS FOR  
BNSF RAILWAY COMPANY

March 23, 2011

### **CERTIFICATE OF SERVICE**

I hereby certify that I have this 23rd day of March, 2011, caused to be served copies of the above BNSF Railway Company's Answer to Supplement to Complaint by e-mail and First Class mail upon counsel for Cargill, Incorporated, as follows:

John H. LeSeur  
Peter A. Pfohl  
Daniel M. Jaffe  
Stephanie M. Adams  
Slover & Loftus LLP  
1224 Seventeenth Street, N.W.  
Washington, D.C. 20036

  
Kathryn J. Gainey

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